

Section 9: The Risk Management Workers Compensation Program

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Quick Tips

What do you do if you are injured on the job?

- ☐ Report the incident to your supervisor or your entity's workers compensation contact person
- ☐ If the injury requires medical treatment:
 - Seek medical treatment from the designated medical provider
 - Complete Sections 1 and 4 of First Report of Injury Form (SFN 2828)
 - Request the care provider complete Section 3 of the SFN 2828
 - Return completed Section 3 to your supervisor or workers compensation contact
- ☐ Inform your employer, Risk Management, and Workforce Safety & Insurance (WSI) of any extenuating factors pertaining to your occupational injury or disease.
- ☐ Participate in the State's Transitional Duty Program, if applicable.

What do you do if your employee is injured on the job?

- ☐ File an incident report with Risk Management within 24 hours of notification of the incident.
- ☐ File Sections 1 and 4 of First Report of Injury form (SFN 2828) electronically.
- ☐ Provide employee notice if injury is determined to be FMLA-qualifying.
- ☐ Monitor a Temporary Total Disability determination.
- ☐ Implement the State's Transitional Duty program, if applicable.
- ☐ For traumatic injury:
Immediately file SFN 2828 electronically to initiate medical management of the injury until the employee is able to file Section 2.

**How does the
Transitional Duty
Program Work?**

- ☐ An injured employee who cannot perform the essential functions of his or her position is placed on transitional duty during the course of recovery.
- ☐ Serves as a tool for motivated employees who want to continue working.
- ☐ Speeds recovery and reduces workers compensation costs.
- ☐ If hiring agency unable to provide transitional duty position, one will be located in another agency or facility through the State's transitional duty pool.

**What if the injury is
permanent?**

- ☐ State employees have re-assignment rights to positions they qualify for and can perform the essential functions of.
- ☐ Services are available from WSI Vocational Rehabilitation Program.

**How does your agency or
facility qualify for the
workers compensation
premium discount?**

- ☐ Establish a program that meets the criteria established by WSI and the Risk Management Division
- ☐ Submit your agency's or facility's application for premium discount by May 1 of each year.

**How does your agency or
facility qualify for the
RMWCP Dividend
Program**

- ☐ Establish a proactive loss control program.

9.1 Introduction

The state of North Dakota has a long standing commitment to provide a healthy and safe working environment for all state employees. N.D.C.C. § 65-04-03.1 establishes a single workers compensation account for all state agencies. The program titled the Risk Management Workers Compensation Program (RMWCP) is administered by the Risk Management Division of the Office of Management and Budget. This cross agency program is designed to reduce costs while enhancing recovery of injured employees and improving workplace moral.

One feature of the RMWCP is the development of a return-to-work program titled the “*Transitional Duty Program*.” See Section 9.4 of this Manual. A return-to-work or transitional duty program is cited by the American Occupational Medical Association for the positive effects it provides to both the psychological and physical recovery of the injured employee. Transitional duty has been proven to work in both public and private sectors across the nation.

Statistics show that injured employees off work longer than six months have only a fifty percent chance of ever returning to their job; if time lost exceeds one year, their chances decrease to less than ten percent. Therefore, the North Dakota Transitional Duty Program is established with the following goals in mind:

1. Foster and enhance the physical and psychological recovery process for injured workers.
2. Reduce medical, disability, and lost time costs.
3. Reduce indirect accident costs.
4. Minimize the chance of re-injury.
5. Encourage cooperation between state agencies, their employees, and management.
6. Establish a more stable work force.
7. Enhance the injured employee’s sense of confidence and well being.

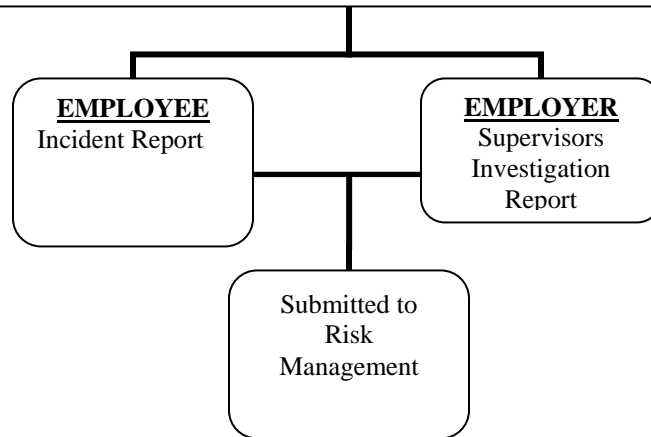
Section 9 of the Risk Management Manual will discuss the North Dakota Risk Management Workers Compensation Program. It should be recognized that this Section cannot be all-inclusive and that situations will arise that are not addressed here. Any questions or concerns can be addressed by contacting the RMWCP Manger at the Risk Management Division at 701-328-7583. In addition, each state agency has a designated risk management workers compensation contact person who will be able to

assist state employees with completing forms to document workplace incidents, injuries, or diseases. To locate the contact from your agency, see the chart located at 3.6-1 of this Manual.

An overview of the RMWCP is shown on the chart found at page 9.1-3.

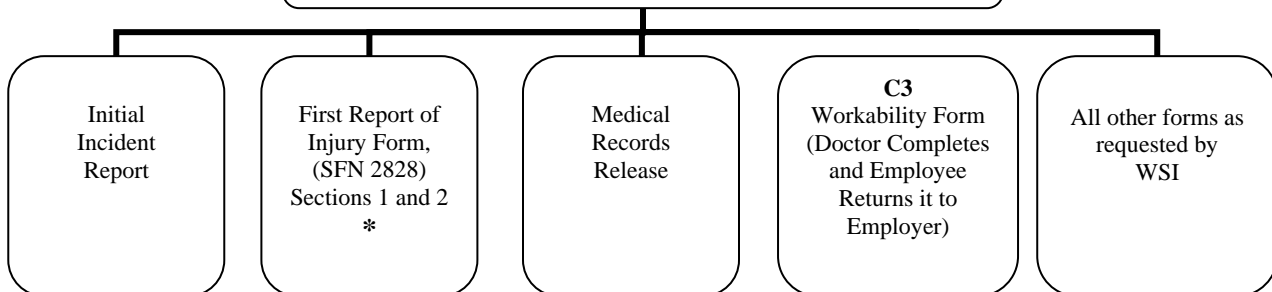
STATE AGENCY NDWC CLAIMS MANAGEMENT PROCESS

INCIDENT (WITH NO MEDICAL TREATMENT)

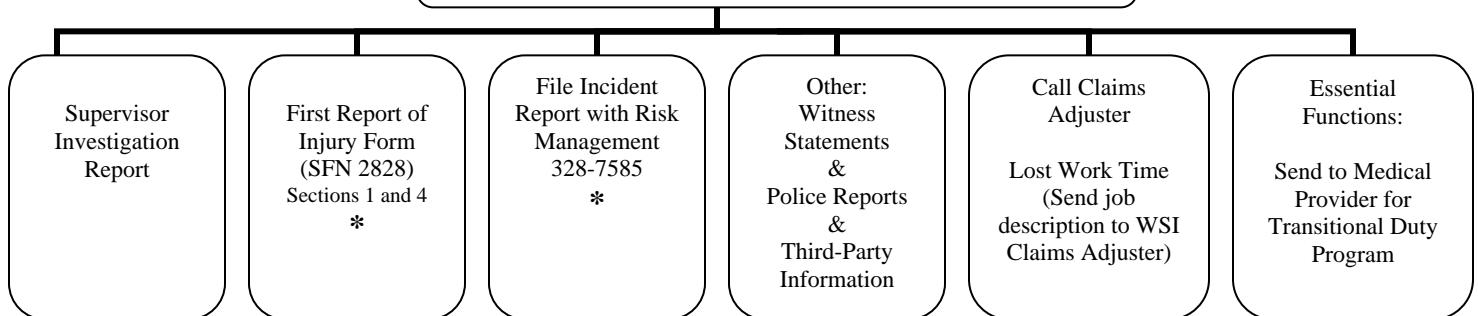


INCIDENT (WITH MEDICAL TREATMENT)

EMPLOYEE COMPLETES:



EMPLOYER COMPLETES:



*Completed on line and filed electronically

9.2 Employee Responsibilities

Reporting Incidents and Accidents

Report ALL incidents and accidents as soon as possible to your supervisor (or his/her designee in the event of an absence) preferably by the end of the workday.

Incident Only. If you do not appear to be in need of immediate medical treatment other than first aid,* assist your supervisor in completing a Risk Management Fund Incident Report form (SFN 50508) or your entity's employee incident report form. The incident report serves as a record of notification to your employer pursuant to N.D.C.C. 65-05-01.3 in the event you should require medical treatment at a future date.

*First aid injuries mean any one time treatment and subsequent observation of minor bruises, scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such treatment and observation are considered first aid even when provided by registered professional personnel.

Your workers compensation contact will forward a copy of the incident report to the Risk Management Division, within 24 hours of notification of an incident. If the incident does not result in a workers compensation claim, the incident report will be used for loss control purposes.

Injury. Reportable injuries are defined as injuries requiring medical treatment beyond first aid. If you are injured and intend to seek medical treatment, when practical, you must:

- 1) Notify your supervisor and your agency risk management workers compensation contact.
- 2) Complete the Section 1 and Section 2 of the SFN 2828 form and file it with Workforce Safety & Insurance (WSI). *Note:* It is recommended this process be completed electronically at www.workforcesafety.com/.
- 3) Advise your employer that you are seeking medical treatment.

NOTE: Employees must seek treatment from the pre-selected Designated Medical Provider for all but emergency care or when travel time would delay care.

- 4) Have your medical provider complete Section 3 of the form or similar form with the same information.
- 5) Return the form completed by the medical provider to your designated agency risk management workers compensation contact as soon as possible, but no longer than 24 hours after receiving treatment.

Contributing Factors

An injured employee is required to report any extenuating factors involved with an occupational injury or disease. That information must be communicated in writing to the Risk Management Division and WSI at the time the incident is reported to the employer. Extenuating factors include:

- 1) Knowledge about pre-existing injuries or conditions.
- 2) Second jobs or hobbies that could affect the severity of or recovery from the injury.
- 3) Third party involvement (conditions of leased property, equipment malfunction, vehicles).

Transitional Duty

If your medical provider releases you for transitional duty (See Section 9.4, Transitional Duty Program) or if your temporary transitional duty has expired you must:

- 1) Maintain regular contact with your supervisor or designated representative.
- 2) Provide a Doctor's Report of Injury Form (C3) or similar form completed by the medical provider to your Risk Management Contact and supervisor after each medical appointment.
- 3) Select leave choice option.
- 4) Provide your agency and the WSI claims adjuster with a current address and telephone number at all times.

Permanent Physical Limitations

If you are released to work, but your medical provider indicates that you will have permanent limitations that will not allow you to perform the essential functions of your regular position and changes or accommodations cannot be made, the Risk Management Workers Compensation Manager will work with your agency to determine if an alternate vacant position is available. If not, you will be referred to your personnel or administrative officer to identify suitable positions that you are qualified to be reassigned

to. Your name will be referred to other state entities for consideration when hiring for vacant positions that you qualify for. An appropriate alternate position must be approved by your medical provider. If a suitable vacancy is not offered within 30 days of the meeting with personnel, other rehabilitation options will be available through WSI. A Rehabilitation Consultant will develop a return-to-work plan taking into account your functional capabilities, employment history, work experience, education, and transferable skills.

For information regarding your claim, contact the Risk Management Division or WSI.

9.3 State Entity Responsibilities

Facilitating the Reporting of Workplace Incidents and Accidents

Risk Management Workers Compensation Contact. Each State entity is required to appoint a risk management workers compensation contact person to serve as a liaison between the injured state employee, the Risk Management Division, and WSI. All employees of your agency or facility should be made aware of the contact person's name and telephone number. *Note:* a list of risk management workers compensation contact persons can be found on the chart following page 3.6-1 of this Manual.

Employees must be directed to report ALL incidents and accidents as soon as possible to their supervisor (or his/her designee in the event of an absence). The supervisor is then responsible to work with the employee and risk management workers compensation contact person to complete the reporting procedures. A checklist titled *Risk Management Workers Compensation Program Supervisor Checklist* has been developed to assist the injured employee's supervisor in completing this process. See a sample of that form at page 9.7-2 of this Manual.

Designated Medical Provider (DMP). The Risk Management Workers Compensation Program (RMWCP) has selected state-wide occupational health specialists to serve as the Program's DMPs. The occupational health specialists are located in medical facilities (including satellite care centers) across North Dakota. They employ registered nurses to assist injured workers who seek medical treatment. These nurses assist with coordinating care and restrictions for medical necessity and appropriateness; provide recommendations; act as a liaison between the injured worker, employer, medical provider, and WSI claims adjuster; and assist in the coordination of transitional work.

State entities that use one of the Program's DMPs can expect to see reduced costs associated with their employees' claims, fewer long-term claims, a more timely return to work by injured employees, a discount in its workers compensation premium, and the elimination of the \$250 deductible cost associated with workers compensation claims.

It should be noted that the \$250 deductible will not be waived when an employee seeks treatment at an emergency room when it would have been appropriate for that treatment to have been provided at a clinic, after-hour clinic, or walk-in clinic, even if it meant waiting until the next morning when

the clinic opens. Of course, the \$250 deductible will be waived when the employee has adopted the DMP program and the required treatment is of an emergency nature or if a delay in treatment will result in worsening the condition.

All State agencies and facilities are required to notify its employees of its DMP choice. Employees have the option of selecting a different provider but must make that selection known to the employer before they seek treatment for a workplace injury. Documentation that the agency or facility has informed all employees of the its DMP selection, and a list of employees who select a different DMP (and their selected DMP) must be filed with the Risk Management Division by July 15 of each year. The form located at page 9.7-5 will facilitate this process.

Incident Reporting. For all reported injuries, even if the injury does not appear to need medical treatment other than first aid,* complete a Risk Management Fund Incident Report form (SFN 50508) or your entity incident report form and file it with the Risk Management Division within 24 hours of receiving the report of the injury. The incident report serves as a record of notification to the employer pursuant to N.D.C.C. 65-05-01.3 in the event the employee should require medical treatment at a future date. If the incident does not result in a workers compensation claim, the incident report will be used for loss control purposes. With prior approval from Risk Management, agencies can submit monthly incident summary reports.

*Reportable injuries are defined as injuries requiring medical treatment beyond first aid. First aid injuries mean any one time treatment and subsequent observation of minor bruises, scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such treatment and observation are considered first aid even when provided by registered professional personnel.

Traumatic Injury Reporting. If an employee suffers an injury that is traumatic and will result in hospitalization, or temporary total disability, the supervisor or contact person must immediately file First Report of Injury form (SFN 2828) (preferably electronically) to report and initiate medical management of the claim. In addition, Risk Management must be notified by calling 328-7583. It is imperative that this reporting process be completed to ensure that immediate and appropriate care is provided to the injured employee.

The supervisor or agency contact is then required to follow up with the employee to ensure that Sections 1 and 2 of the SFN 2828 is completed and filed with WSI.

Routine Injury Reporting. If an employee is injured on-site and intends to seek medical treatment, render assistance as necessary and make arrangements for transport. If the injury is an emergency, seek urgent care at the nearest facility.

Ensure that employees are informed that if the employee is injured off-site, and if their condition may worsen if they delay treatment until it is available by the Designated Medical Provider, they are to:

- 1) seek treatment at clinics, after-hour clinics, and walk-in clinics where available;
- 2) in an emergency – seek immediate medical care at the nearest emergency room;
- 3) notify the health care provider that the injury is a workers' compensation injury; and
- 4) to arrange to have a report of the incident called in to the supervisor or contact person explaining the circumstances of the injury, the need for treatment (emergency or other), and their destination.

NOTE: Employers should encourage employees to seek treatment from the employer's chosen Designated Medical Provider for all but emergency care or where travel time would delay care. The injured employee may elect to be treated by other than the employer's Designated Medical Provider if they have designated a separate Designated Medical Provider, in writing, prior to the injury.

Offer to call the Designated Medical Provider to set up the appointment, if feasible.

Complete the Section 1 and 4 of the SFN 2828 form and file it with WSI within 24 hours, if possible, but no later than 24 hours from receipt of a copy of the Employee's Report of Injury.

Advise the employee that if he or she is seeking medical treatment that they are required to file Section 1 and Section 2 of the SFN 2828 form with WSI and to return Section 3 of the form to their supervisor or risk management workers compensation contact as soon as possible but no later than 24 hours after receiving treatment.

Family and Medical Leave Act (FMLA). To strike a fair balance between protecting employment interests and managing long term absences from the workplace, most experts agree the employee's 12 week FMLA leave entitlement should run concurrently with workers compensation leave. Accordingly, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation

to the employee. For each workers compensation injury that results in a “serious health condition,” you should designate the leave as FMLA-qualifying and promptly notify the injured employee.

It is important to insure that the employee is qualified for leave under the Family Medical Leave Act. Employers should check if the employee has used any family medical leave in the past twelve months and whether the agency’s policy defines the twelve month period as:

- the calendar year;
- any fixed 12-month “leave year” such as a fiscal year, a year required by state law, or a year starting on the employee’s “anniversary date;”
- the 12-month period measured forward from the date any employee’s first FMLA leave begins; or
- a “rolling” 12-month period measured backward from the date an employee uses FMLA leave.

If the completed C3 indicates the need for leave for the employee, within two business days of receiving that information, notify the injured worker that the paid leave is to be designated as covered by FMLA and will be counted as such. Oral notices should be confirmed in writing no later than the next payday.

Employees may elect to utilize their rights under FMLA, if applicable, in lieu of accepting a transitional duty position. Provisions of FMLA will supersede the provisions of the transitional duty program. However, workers compensation benefits may be discontinued if FMLA is chosen in lieu of a transitional duty assignment.

Temporary Total Disability. If an employee experiences a total disability that is temporary, and the medical provider has taken the employee off work for five or more consecutive calendar days, the employee will be paid a weekly compensation rate of 66 and 2/3 of the employee’s average gross weekly wage at the time of the injury. Total benefits cannot exceed statutory maximum benefit or go below the statutory minimum unless the employee’s preinjury net wage was lower than the statutory minimum, in which case the employee would receive benefits equal to the preinjury net wage.

The employee may also receive up to \$10 each week for each dependent child the employee supports. Dependent children are children under the age of 18 residing in the injured worker’s household or to whom the injured worker has a legal obligation to support, children 18 or over who are incapable of supporting themselves because of a disability and dependent

upon the injured worker for support, or children between the ages of 18 and 22 who are full-time students and dependent upon the injured worker for support.

Transitional Duty Assignment. The injured employee's supervisor must continue to communicate with the employee, provide assistance as necessary, evaluate the information on the physical assessment form, and develop a transitional duty assignment as necessary. If the employee will not be performing their regular job duties or if the work restrictions are unclear and clarification needs to be obtained, complete the "Temporary Transitional Duty Assignment" form and forward to the medical provider for approval prior to initiating the assignment. If a job description was not available at the time the employee sought medical treatment and the employee has been taken off work or if work restrictions are unclear, fax a copy to the medical provider and the Risk Management Division. See Section 9.4 for additional information on the State's Transitional Duty Program.

Remember, Section 3 of the SFN 2828 must be provided to the injured employee's supervisor following each medical provider visit.

Contact the appropriate agency representative or the Risk Management Division at 328-7583 if there are any questions regarding these procedures.

Failure by State Entity to Participate in the Transitional Duty Program. If a State entity has an injured worker who 1) has been off work for longer than 5 consecutive days, 2) has been cleared for transitional duty by their medical provider, and 3) for whom a position is available to meet their restrictions and that entity fails to participate in the Transitional Duty Program, that entity may be surcharged \$25.00 for each calendar day it fails to participate.

Follow-up to Reported Incident or Injury

The injured employee's supervisor is required to investigate the accident resulting in the incident or injury and complete an incident report within 24 hours of the incident. Obtain written witness statements if applicable.

9.4 Transitional Duty Program

Purpose. Transitional duty (return-to-work) programs serve as "tools" for motivated employees who want to continue working during the course of their recovery from an occupational injury or disease. Transitional duty helps the employee stay in the work environment which, in turn, has proven to speed recovery and reduces workers compensation costs.

Transitional duty may also serve as a cost control technique for employees who are not motivated to be at work during their recovery or for those situations where there is suspicion regarding the severity of the injury. A transitional duty program encourages physicians to medically release the employee for work when appropriate.

State Policy - *The State of North Dakota has established a Transitional Duty Program that will enhance recovery, comply with the Americans with Disabilities Act, help minimize workers compensation costs, and provide a service to employees who are injured or contract an occupational disease in the scope of their employment with the State.*

Employees will be placed in transitional duty positions, when feasible, during the course of recovery from an occupational injury or disease that precludes them from performing their normal job tasks. In the event of a permanent disability that prevents an employee from performing the essential functions of their regular position and for which reasonable accommodations cannot be made, every effort will be made to place the employee in an alternative vacant position that they are qualified to perform and that matches their physical limitations.

Note: N.D.C.C. § 65-05-08(7) provides that if an employee refuses to return to work or if the transitional duty does not work out for reasons not related to their medical condition (attendance, cooperation, etc.) the employee's compensation payments may be discontinued.

Implementing the Transitional Duty Program

State Responsibilities

Transitional Duty Pool - State agencies and facilities are encouraged to establish and locate their own transitional duty positions in-house. However, if none are available to accommodate an injured employee's restrictions, a position will be located through the RMWCP. The state entity that is the employer at the time the injury occurred to the employee will be required to pay the full pro-rated salary of the employee while the receiving agency will enjoy the benefit of an extra employee compensated by the originating agency. The Administrative Rules adopted by the Risk Management Division governs the operation of the TDP.

State Entity Responsibilities

- Provide transitional duty that accommodates the physical limitations of employees who are recovering from an occupational injury or disease.
- Identify possible alternative work or special projects prior to the need to utilize transitional duty.
- Communicate the employee's and supervisor's responsibilities in regard to their role in this program and ensure that all parties perform these responsibilities.
- Communicate with the Risk Management Division, WSI, and the health care provider in regard to the availability of transitional duty, the status of the employee's claim and any extenuating facts or circumstances that could affect the employee's early return to work.
- If unable to accommodate the employee's restrictions, contact the agency's personnel or administrative officer and Risk Management to locate appropriate transitional duty within another agency.

Once a position is identified, a copy of the duties must be sent to the employee's treating medical provider for approval. A follow-up phone call should be made to facilitate the response. If a timely response is not received, the state entity should contact the RMWCP.

The receiving agency supervisor who will be responsible for the employee will be required to sign the temporary transitional duty job description. It is imperative that the physical limitations set by the medical provider are not exceeded. Consideration will need to be given to part time situations and required time off to attend medical appointments.

A \$25.00 surcharge may be imposed on an employing agency that fails to provide transitional duty to an injured employee who has been off work for at least 5 consecutive calendar days, for whom a position is available to meeting the employee's limitations and restrictions, and if the employee has been cleared for transitional duty. There would be no penalty for a receiving agency not agreeing to accept an injured employee for transitional duty.

If an entity has a position or special project that would be appropriate to accommodate someone with a physical limitation (usually back injuries, hand and wrist injuries, or leg, foot or ankle injuries), a description of the duties and physical requirements can be sent to the agency's personnel or administrative officer or the Risk Management Division for addition to the TDP.

The Risk Management Division will be reviewing lost time injuries with WSI. State entities with employees who have not been returned to work within 5 days of their injury will be contacted to facilitate this process.

If the State is unable to provide transitional duty or if a medical provider refuses to release the employee to ANY type of work, the employing entity must establish a regular schedule of consistent contact with the employee to provide moral support, assistance, and to monitor the progress of their medical status. Reports of these contacts should be provided to the Risk Management Division to ensure the efficient and timely handling of the claim.

If an employee's medical provider certifies that the employee has sustained permanent limitations that do not allow the employee to perform the essential functions of their regular position, every effort will be made to make reasonable accommodations. This includes a reassignment to an appropriate vacant position. State entity personnel should interview qualified employees with permanent limitations from other agencies who are referred from the agency's personnel or administrative officer for vacant positions, and give consideration to hiring them. Incentives to hire previously injured employees in positions that will accommodate their restrictions resulting from a workplace injury may be available through WSI Preferred Worker Program.

Note: The Risk Management Division will serve as a technical resource for information and problem solving. Call 328-7583 for information or assistance.

Employee Responsibilities

If your medical provider indicates that you have temporary physical restrictions that do not allow you to perform your regular job, consideration will be given to modify your duties as necessary. If it is not possible or feasible to modify your duties, either a transitional duty assignment that meets your physical restrictions will be developed, or an appropriate position will be located. You will receive your normal wages and benefits that will be prorated if less than 8 hours a day are worked. This assignment will last until the earlier of:

- a) Ninety consecutive calendar days elapse from the acceptance of the special assignment.
- b) Your medical provider indicates you have permanent restrictions that will prevent you from returning to your job.
- c) Appropriate transitional duty tasks are no longer available.
- d) You are released to full duty.
- e) Your claim for workers compensation benefits is denied.
- f) Your own agency, department, or facility finds a position that meets the restrictions set by your physician.

You must respond to a transitional duty assignment offer within 24 hours, when possible, but not later than two days. Exceptional circumstances will allow up to seven days for a response. Disability benefits may discontinue if an employee does not accept a transitional duty position that is approved by their medical provider and is within 25 miles of the pre-injury position.

Note: Employees may, at their own discretion, accept a temporary position that is more than 25 miles from their original position. An employee will not be subject to the denial of benefits if he or she does not accept the temporary position that is more than 25 miles from their original position. Employees may elect to utilize their rights under the Family Medical Leave Act, if applicable, in lieu of accepting a transitional duty position. Provisions of FMLA will supersede the provisions of this program. However, workers compensation disability benefits may be discontinued.

TRANSITIONAL DUTY ASSIGNMENT DEFINED

Option 1 - Employee remains assigned to regular job with some key tasks or functions temporarily altered or suspended or hours temporarily reduced. If the employee is performing at least 51% of the essential functions of their position there will not be a classification issue and this transitional duty will not necessarily need to be limited to 90 days. This is considered reasonable accommodation provided that an undue hardship is

not placed on the agency due to the limited work status of the employee.

- Option 2 -** Medical restrictions prevent an employee from performing significant portions of his or her regular job tasks. Supplemental tasks not usually done by the employee, but within medical restrictions are identified. Supplemental tasks are assigned to fill employee's allowed work time.
- Option 3 -** Employee's medical restrictions prevent employee from accomplishing most of his or her regular job. A series of supplemental tasks are assembled and combined to fill employee's allowed work time. Creativity is essential-special projects, volunteer related activities, assistance with safety program implementation, etc.
- Option 4 -** The injured employee's agency cannot accommodate temporary transitional duty requiring an appropriate position from another agency. The employee works in a vacant position, volunteer position, or special project for a maximum of 90 days. The original agency will continue to pay the employee's salary. Special efforts must be made by the original agency, receiving agency, and WSI to ensure that all related issues are properly handled. Risk Management must be notified and will coordinate this option.

In all of the above options, the employee remains in their regular position and job classification. They continue to receive regular wages and accrue benefits. Seniority, lay-off rights, and other employee rights remain intact. Wages and benefits are pro-rated, based on actual hours worked. In some cases, when an employee is only working part time, wages may be supplemented by payment of temporary partial disability. These benefits end when wages return to at least 90% of the employee's gross weekly pre-injury wages.

Changes in transitional duty are based on the treating medical provider's documented physical limitations. The employee must bring an updated physical assessment form to their supervisor after each appointment to evaluate the possibility of changes or increase in duties.

Options 2, 3, and 4 are *temporary* special assignments. They are offered when there is medical documentation that the employee cannot perform the regular job, but is expected to recover from the injury or illness within a reasonable period of time. Transitional duty is not reinstatement or reemployment. Special assignments will end when one of the following occurs:

- a) Ninety consecutive calendar days have elapsed from the day the employee starts the assignment.*
- b) The employee is released for regular work.
- c) Permanent restriction that prevents the employee from performing the essential functions of their regular position and for which reasonable accommodations cannot be made, is documented.
- d) The temporary assignment is no longer available or other conditions require the agency to stop the temporary assignment.
- e) The claim for workers compensation benefits is denied.
- f) Suitable transitional work which will last for the remainder of the time ordered by the physician becomes available with the original agency or facility.

* A second 90 day temporary position may be approved if the employee performs one term while being conservatively treated for an injury and then ends up having a surgery which requires some lost time and a subsequent recovery period is needed. An option to extend the 90 days is to temporarily reclassify the employee's position if the disability is projected to continue for an extended period of time and the reclassification does not pose a hardship to the agency.

9.5 Permanent Disabilities

Re-assignment rights. This subsection explains the procedures that will occur in the event that an employee is unable to perform the essential functions of his or her regular position due to a permanent disability that results from the employee's industrial injury or occupational disease. This differs from transitional duty because, in the event of a permanent disability, alternative positions would need to be permanent and the 90 day period that pertains to transitional duty would not apply. This does not prejudice State employees as they have re-assignment rights to positions they qualify for and for which their permanent limitations do not preclude them from performing the essential functions.

In the event of a permanent disability, WSI will assign a Vocational Rehabilitation Consultant to assist with the identification of job goals that are appreciable to restrictions and transferable skills. The Vocational Rehabilitation Consultant will request the agency's personnel or administrative officer to review the employee's personnel file. That review will determine alternative State positions for which the employee meets the minimum qualifications and would be eligible to take as a transfer, comparable transfer, or voluntary demotion. The Claims Adjuster will provide this information to the Vocational Rehabilitation Consultant. The information will then be forwarded to the employee and the agency or facility for consideration for future vacancies.

Upon receipt of permanent limitations, the Vocational Rehabilitation Consultant will again contact the agency or facility for review of the possibility of reasonable accommodations or placement into an alternative position that is available. If the agency or facility indicates that neither of these two options is possible, the Rehabilitation Consultant will contact the agency's personnel or administrative officer to set up a meeting with all parties to discuss the employee's options, to explain their rights to transfer and voluntarily demote, and to review appropriate vacancies.

From the date of this consultation, the State, as the employer, will have 30 days to review vacancies, offer alternative employment or propose an on-the-job training opportunity. In some cases, the position does not have to be immediately available, as long as the offer is made and accepted within the 30 days and the position will be available within 90 days. Once this 30 days has elapsed the Vocational Rehabilitation Consultant will pursue other rehabilitation options with the employee.

During this 30 day time period the names of eligible employees will be provided to various personnel representatives who are requesting certification lists for appropriate vacancies. These employees should be

given the opportunity for an interview when qualified. Every effort needs to be made to offer these employees alternative employment as ADA issues could apply and the costly process of vocational rehabilitation can be avoided.

9.6 Premium Discount Program

History. In 1993 North Dakota Workers Compensation (NDWC) implemented a premium discount program that awarded efforts to implement a pre-approved risk management program. (N.D.C.C. § 65-04-19.1) In 1995 the North Dakota Legislature mandated every State agency, institution, and entity employing 25 or more full-time equivalent employees participate in that program. (N.D.C.C. § 65-04-19.2) Implementing this program provides the necessary tools to construct an effective method of promoting safety and claims management for State entities' workers compensation exposures.

Through the Risk Management Workers Compensation Program (RMWCP), the original NDWC (now WSI) discount program has been enhanced to reward State entities with a proactive claims management/injury prevention program. The current discount potential has been set to at a potential 10% discount and the RMWCP is committed to ensuring all State agencies or facilities qualify to the fullest discount possible. Qualifying for the discount should result in a reduction in the number of days an injured worker is away from work – which results in reduced claims costs. This reduction will have a positive impact on the entity's experience rate (projection of future losses), ultimately reducing the total cost of its workers compensation premiums.

By qualifying for this program an entity and its employees will realize:

- Increased safety awareness.
- Improved morale among employees.
- Reduced risk of injury to employees and damage to equipment.
- Improved quality of work.
- Increased productivity.
- Reduced workers compensation claims costs through properly responding to and managing workplace injuries.

Requirements of the Risk Management Workers Compensation Discount Program. To qualify for a discount, a State entity must have a program in place that has been approved by the Risk Management Division. The program must contain the following requirements:

1. **Safety Policy** – Prepare a statement, signed by top management, identifying the responsibilities of management and employees for ensuring a safe workplace. Review this policy with all employees on an annual basis.
2. **Safe Operating Procedures** - Develop written guidelines for procedures and tasks involving recognized hazards.
3. **Annual Inspection** – Conduct an annual inspection of your agency/facility workplace.
4. **Essential Job Functions** - Develop a list of essential job functions for each job category. These lists help you properly place workers in jobs and assign injured workers to transitional duties.
5. **Establish a written training program** through which all employees learn about general safety rules, safe operating procedures, ergonomics hazards, and claims management principles.
6. **Implement an effective claims management program** including the designated medical provider and transitional duty as required.
7. **Online claim filing** – Ensuring that 90% of workers compensation claims are filed on-line within 24 hours of a routine injury and immediately following a traumatic injury,
8. **Incident Reporting** – Ensuring that 90% of Workers Compensation incidents are filed on-line with Risk Management within 24 hours of notice of injury.
9. **Accident Investigation and Near-Miss Program** – Develop procedures for investigation all accidents a “near misses/incidents.”
10. **Ergonomics Program** – Develop an ergonomics action plan/program.

How to apply for the Discount Program. Complete and submit the RMWCP Premium Discount Application form found in Section 9-7 to the Risk Management Division by June 30th of each year.

If you need any assistance in completing the application process, contact the RMWCP Manager at (701) 328-7583.

RMWCP Dividend Program

Through proactive loss control practices, the RMWCP has realized savings to the State for workers compensation costs. In an effort to share those savings with the agencies and facilities that have effectively addressed and

managed their claims, the RMWCP has adopted a dividend program that will go into effect for fiscal year 2005. Agencies will not be required to file any additional paperwork to qualify for this dividend program. Rather, at the time of premium renewal, the Risk Management Division will determine each agency's or facility's dividend by dividing the cost of that entity's premium for a period of 3 to 5 years by the entity's total losses for that same period (the incurred loss ratio). The incurred loss ratio will determine the dividend based on:

Incurred Loss Ratio	Premium Size				
	\$0 to \$25,000	\$25,001 to \$50,000	\$50,001 to \$75,000	\$75,001 to \$100,000	\$100,001 and Over
0% - 5%	14%	17%	20%	23%	26%
5.1% - 10%	10%	13%	16%	19%	22%
10.1% - 15%	8%	10%	13%	16%	19%
15.1% - 20%	6%	7%	9%	12%	16%
20.1% - 25%	4%	5%	7%	9%	13%
25.1% - 30%	3%	4%	5%	7%	10%
30.1% - 35%	0%	2%	4%	5%	7%
35.1% - 40%	0%	0%	2%	3%	4%
40.1% - 45%	0%	0%	0%	2%	2%
45.1% & Over	0%	0%	0%	0%	0%

9.7 RMWCP Forms

The forms developed to implement and support the State's Risk Management Workers Compensation Program can be found immediately following this page.

STATE OF NORTH DAKOTA
TRANSITIONAL DUTY PROGRAM

Risk Management Contact and Supervisor Checklist

(All parts of this checklist must be completed with "date accomplished" or "not applicable" and once completed filed with the Risk Management Workers Compensation Manager (RMWCPM). If you have any questions, contact your agency's workers compensation contact or Risk Management.)

EMPLOYEE NAME: _____ **SSN:** _____

INJURY DATE: _____

Reporting:

- _____ **Incident Report** completed by Employee as soon as possible after incident/ accident, but not more than 24 hours.
- _____ **Supervisor's Accident Investigation** completed (immediately if possible, not later than 24 hours).
- _____ Obtain written witness statements if applicable.
- _____ Sections 1 and 4 of **First Report of Injury Form (SFN 2828)** completed by supervisor (if employee seeks medical treatment) and sent to WSI and/or designated agency representative within 24 hours.
- _____ Forward a copy of the C-3 or similar form and Supervisor's Accident Investigation Report to the Agency Risk Management Workers Compensation Contact and the Risk Management Office.

Transitional Duty

- _____ Inform the employee that you will design transitional duties based on the medical provider's limits, if possible, or locate an appropriate assignment from another agency. Remind the employee that the C-3 or similar form must be returned within 24 hours if possible, but not later than 2 days of every medical provider visit.

If the employee is medically restricted from returning to full duty:

- _____ Identify transitional duty utilizing the Physical Assessment Form (C-3 or similar form).
- _____ Call the RMWCM, if necessary, to discuss transitional duty options.
- _____ Outline tasks in a temporary duty assignment description.
- _____ Fax a copy of the proposed Temporary Transitional Duty assignment to the RMWCM.
- _____ When approved by the medical provider, contact and inform the employee when he/she will be expected to report to work.
- _____ Provide the employee with a copy of the temporary assignment description and obtain the employee's signature.
- _____ Maintain the original in an appropriate file.
- _____ Send a copy to the RMWCPM.
- _____ Call the RMWCPS if you or the employee have **ANY** questions about medical restrictions or assignments ***before the*** employee starts work.

If the medical provider documents that the employee is to remain completely off work:

(Note: Medical providers must provide work restrictions. They should not provide a work use that simply states that the employee is to stay off work.)

_____ Determine if the employee is in a hospital, confined to bed rest or immediately recovering from a surgery.

If the employee does not report as assigned:

_____ Notify Risk Management and appropriate agency representatives.

_____ Try to call/contact employee that day to determine why they did not report for work.

_____ Send a certified letter to the employee instructing them to return to work; and that failure to do so will result in an absent without leave status, subject to progressive disciplinary procedures.

Temporary Transitional-Duty Assignment

Day One (first day employee reports as assigned)

_____ Review assigned tasks, physical restrictions based on physical assessment, work assignment and supervisor with the employee **prior** to beginning work.

_____ Remind the employee not to work beyond the established work restrictions. If you or employee has any questions regarding restrictions or tasks, call the medical provider.

Day 30 and Day 60 (consecutive calendar days from Day One):

_____ Update and upgrade task assignments as doctor relaxes employee's limitations.

_____ Review each new assignment with employee prior to beginning work.

_____ Send update of temporary transitional-duty assignment description to medical provider for approval if significant changes have been made.

_____ Ask the claims adjuster to contact the medical provider, if no progress is noted.

_____ Provide RMWCPM copies of any correspondence to the claims adjuster and the appropriate agency.

Day 75:

_____ Give the employee two-week notice if the employee is not completing at least 51% of regular job duties. Send a copy of the notice to Risk Management and appropriate agency representatives.

Day 90:

_____ Arrange call-in program with employee, specifying frequency of call-in, when to call in and to whom to report. Have employee complete Workers' Compensation Leave Options Form, if not already completed.

_____ If the employee is performing 51% of the job duties and is still making medical improvements, extend the transitional duty assignment in increments of 30 days as indicated. Always identify the next date of evaluation-do not leave it open-ended.

Notify Risk Management in writing when the transitional duty assignment has ended.

SPECIAL NOTE: Make a special effort to provide any assistance needed to the employee in obtaining information or assistance in the management of their claim. A caring and helpful attitude by the supervisor is very important in promoting recovery from an injury.

I have completed the actions as required on this checklist on the dates I have indicated.

Signature Title

Date

Dear Medical Provider,

The State of North Dakota has implemented a proactive Transitional Duty Program for our employees who are injured on the job. All State agencies are involved with this program and when possible will temporarily modify an employee's regular job requirements or provide alternative work while an employee is recovering from an injury. An inter-agency pool of temporary transitional duty jobs has been established that will accommodate most temporary physical restrictions if an agency cannot provide alternative work.

The length of this transitional duty is 90 calendar days unless the employee is performing most of their regular job functions. The employee will receive their regular wage during the performance of transitional duty which will be pro-rated if less full time work is performed. Part time positions are available if necessary and accommodations for medical appointments will be made.

A job description of the employee's regular position will be provided for your review. Please note which duties need to be eliminated or transitional and the specific medical reason for this. If you believe that this employee will have permanent restrictions or will not be able to return to their regular job within 90 days, please provide documentation to support this.

We share the common goal of seeing this employee fully recovered and returned to regular work as soon as possible. We plan to focus on abilities, not disabilities, in providing temporary transitional duty and respectfully request your support and communication in this regard.

PLEASE COMPLETE THE C-3 FORM at the time of the each appointment. Our employees are required to deliver this form to their supervisor after every appointment so that suitable job tasks can be identified or modified as needed. An alternate form is acceptable if it provides similar information.

If you have any questions, please feel free to contact us as noted below.

Thank you.

Contact Person: _____

Telephone: _____

STATE OF NORTH DAKOTA

WORKERS' COMPENSATION LEAVE CHOICE OPTION

PURPOSE OF THIS FORM:

Employees who are eligible to receive temporary total disability benefits for a lost time claim can continue to receive full salary by choosing one of four options of leave to supplement their benefits. The disability checks stubs must be turned over to the agency payroll clerk to receive this benefit. The amount paid by WSI will be deducted from your paycheck. State law prohibits employees from receiving both workers' compensation benefits and full leave benefits simultaneously.

You may choose to be placed on leave without pay in lieu of using accrued leave. If you used paid leave and your leave is exhausted, you may, with the approval of the appointing authority, be placed on a leave of absence without pay.

When you choose options # 2 - #5 to supplement your disability benefits, the amount of paid leave charged equals the difference between the benefits check and your regular salary. Your pay center will issue a check for the full amount of your salary less the benefits check.

These options can be changed or modified as necessary by working directly with the appropriate payroll clerk.

Choice (Check One)

- _____ **Option #1** - Do not apply any accumulated leave time during the period in which workers' compensation is being received.
- _____ **Option #2** - Apply accrued sick leave to make up the difference between my workers' compensation benefits and my normal salary during the period in which workers' compensation is being received.
- _____ **Option #3** - Apply accumulated compensatory time to make up the difference between my workers' compensation benefits and my normal salary.
- _____ **Option #4** - Apply accrued annual leave to make up the difference between my workers' compensation benefits and my normal salary.
- _____ **Option #5** - Apply a combination of Option #2, #3 or #4 to make up the difference between my workers' compensation benefits and my normal pay, during the period in which workers' compensation is being received. Record in the space below the type and amount of leave and the order in which you would like it used. **Also, note any special instructions regarding leave usage. (Example: use all sick leave except for 8 hrs and then apply annual leave.)**

I understand that the amount of leave benefits combined with workers' compensation benefits cannot exceed my normal salary.

Employee's Signature

Date

Supervisor's Signature

Date

DESIGNATED MEDICAL PROVIDER

We are participating in the Workplace Safety & Insurance (WSI) Risk Management Program. This allows the Risk Management Workers Compensation Program (RMWCP) to designate health care providers to treat your workplace injuries and illnesses. These providers can be individuals, clinics, hospitals, or any combination thereof. They can be medical doctors, chiropractors, osteopaths, dentists, optometrists, podiatrists, psychologists, or any combination of these providers. **WSI may not pay for medical treatment** to another provider unless you are referred to this provider by the Designated Medical Provider, or unless you notified us in writing prior to the injury that you wanted to be treated by a different medical provider. You must also name your different medical provider. **Emergency care is exempt from this designated provider requirement.**

The Designated medical Provider for _____
is _____

.....
Cut or tear on dotted line

Return bottom portion

Name of employee (please print) _____

I have been informed of the Department's Designated Medical Provider and the provisions of the WSI and RMWCP requirements concerning treatment for workplace injury and illness.

Signature of Employee _____

Date _____

I wish to select the following provider as a designated provider to seek treatment from in the event of a workplace injury or illness.

Name

Address

FMLA Notice to Injured Employee

Dear

This letter is to inform you that (name of State entity) has elected to implement your Family and Medical Leave concurrent with your Workers Compensation Leave resulting from your injury on (_____). Your Family Medical Leave will start on _____ and the time used will be deducted from the twelve weeks available to you in the twelve month period of (calendar year, fiscal year or year triggered by date of injury) as specified in (entity's name) leave policy.

Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

You may elect to substitute accrued paid leave for unpaid FMLA leave.

You will be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until certification is provided.

While on leave, you will be required to furnish us with periodic reports after each medical appointment of your status and intent to return to work.

If you have any questions regarding your Family Medical Leave or Workers Compensation leave status please contact (human resources, supervisor) at (phone).

Sincerely

STATE OF NORTH DAKOTA TEMPORARY TRANSITIONAL-DUTY ASSIGNMENT

Employee's Name _____

Claim No. _____

Date of Injury _____

Date Returned to Work _____

Program End Date _____

This assignment is available *IMMEDIATELY* for a maximum of 90 calendar days.

Job and Pay Data

_____ Unchanged from regular work

_____ Changed from regular work

_____ Full-time

_____ Part Time

_____ Shift/Days Off

Agency/Location:

Supervisor/(phone):

Duties Assigned/Physical requirements:

DUTIES: % TIME/SHIFT

These job duties do not have the following physical requirements:

Supervisor Statement:

I have designed this assignment based on the treating physician's medical restrictions. If I or the employee has any questions regarding the medical appropriateness of this assignment, I will contact the doctor immediately.

Supervisor Signature/Date

Employee:

I have read and understand this temporary assignment. I agree to work within the restrictions listed. If I have any questions or feel I am being asked to work beyond my capabilities, I will notify my supervisor immediately.

Employee Signature/Date

Physician's Statement:

1. I agree this employment appears to be within the employee's capabilities.

Physician's Signature/Date

2. I agree this employment, as amended by me (initial changes), appears to be within the worker's capabilities.

Physicians Signature/Date

3. I disagree. This employment is not within the worker's capabilities because of the following objective medical reasons:

Physicians Signature/Date

Return the completed signed form to: _____

Fax # _____

Questions: Call _____

at telephone number: _____ **or facsimile number:** _____



RISK MANAGEMENT WORKERS COMPENSATION PREMIUM DISCOUNT APPLICATION

STATE OF NORTH DAKOTA
SFN 53425 ()

SUBMISSION DEADLINE JUNE 30
Report of Activity for Current Fiscal Year
(July 1 – June 30)

Agency/Facility	% of Discount
1. Provide documentation of your agency workplace safety policies. Describe, with supporting documentation, how these policies are communicated to employees at least annually and at the time of hire for new employees.	1
2. Describe all tasks and functions performed as part of your agency operations together with the written safety guidelines developed to address recognizable hazards associated with those tasks and agency functions.	1
3. Provide documentation of at least annual inspections of all worksites for workplace safety issues.	1
4. Identify all job categories or classifications within your agency. Identify or provide documentation of all essential job functions within each identified category or classification.	1
5. Describe in detail, with supporting documentation if applicable, all programs established to train and educate employees on general safety rules, safe operating procedures, ergonomics, and claims management principles.	1
6. Describe your agency workers compensation claims management program, together with the identification of your designated medical provider and those policies, directives, and practices that address transitional duty.	1
7. Provide a copy of any written policy or directives to staff that all Workers Compensation incidents must be reported on-line to the Risk Management Division within 24 hours. Describe, with supporting documentation, how these requirements are communicated to staff. NOTE: Agencies with less than 90% of incidents being reported on-line within 24 hours are not eligible for a discount.	1
8. Provide a copy of any written policy, directives or written reminders to staff that all Workers Compensation claims must be filed online with Workforce Safety & Insurance within 24 hours of a work related injury. NOTE: Agencies with less than 90% of workers compensation claims filed online within 24 hours are not eligible for a discount.	1
9. Provide a copy of your policy, procedures or written directives for reviewing all workplace accidents, incidents/near misses.	1
10. Describe in detail, with supporting documentation, your agency ergonomic action plan or program.	1
TOTAL POTENTIAL DISCOUNT	10%

NOTE:

- Participation in the RMWCP discount program is limited to those agencies implementing and maintaining all ten (10) criteria/provisions of the discount application.
- Documentation can be provided to Risk Management either electronically or by paper copy.
- Audits may be performed at the discretion of Risk Management by phone, mail, internet or onsite visit.

Comments	
Signed	Date
Print Name	Telephone Number